

9 FAM 41.58 Aliens in religious occupations.

(TL:VISA-168; 08-08-1997)

(a) Requirements for "R" classification.

(TL:VISA-168; 08-08-1997)

An alien shall be classifiable under the provisions of INA 101(a)(15)(R) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The alien, for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a *bona fide* nonprofit, religious organization in the United States; and

(3) The alien seeks to enter the United States solely for the purpose of

(i) Carrying on the vocation of a minister of that religious denomination, or

(ii) At the request of the organization, working in a professional capacity in a religious vocation or occupation for that organization, or

(iii) At the request of the organization, working in a religious vocation or occupation for the organization, or for a *bona fide* organization which is affiliated with the religious denomination described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(4) The alien is seeking to enter the United States for a period not to exceed 5 years to perform the activities described in paragraph (3) of this section; or

(5) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(b) Religious denomination.

(TL:VISA-168; 08-08-1997)

A religious denomination is a religious group or community of believers. Among the factors that may be considered in determining whether a group constitutes a *bona fide* religious denomination are the presence of some form of ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations. For purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(c) Bona fide nonprofit religious organization in the United States.

(TL:VISA-168; 08-08-1997)

For purposes of this section, a *bona fide* nonprofit religious organization is an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the consular officer that it would be eligible therefore if it had applied for tax exempt status.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(d) Bona fide organization which is affiliated with the religious denomination.

(TL:VISA-168; 08-08-1997)

A *bona fide* organization affiliated with the religious denomination is an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(e) Minister of religion.

(TL:VISA-168; 08-08-1997)

A minister is an individual who is duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. A minister does not include a lay preacher who is not authorized to perform such duties. In all cases, there must be a reasonable connection between the activities performed and the religious calling of a minister.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(f) Professional capacity.

(TL:VISA-168; 08-08-1997)

Working in a professional capacity means engaging in an activity in a religious vocation or occupation which is defined by INA 101(a)(32) or for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required for entry into that field of endeavor.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(g) Religious occupation.

(TL:VISA-168; 08-08-1997)

A religious occupation is the habitual employment or engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(h) Religious vocation.

(TL:VISA-168; 08-08-1997)

A religious vocation is a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

(i) Alien not entitled to classification under INA 101(a)(15)(R).

(TL:VISA-168; 08-08-1997)

An alien who has spent 5 years in the United States under INA 101(a)(15)(R) is not entitled to classification and visa issuance under that section unless the alien has resided and been physically present outside the United States, except for brief visits to the United States for business or pleasure, for the immediate prior year.

[Added by 57 FR 341, Jan. 6, 1992; Amended by 60 FR 42034, Aug. 15, 1995.]

9 FAM 41.58 Related Statutory Procedures

INA 101(a)(15)(R)

(TL:VISA-50; 11-15-91)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

[Added by Pub. L. 101-649, Sec. 209(a), 104 Stat. 5027; 8 U.S.C. 1101(a)(15); November 29, 1990.]

INA 101(a)(27)(C)(ii)

(TL:VISA-168; 08-08-1997)

(27) The term "special immigrant" means—...

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—...

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 1997, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 1997, in order to work for the organization (or for a *bona fide* organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation;...

[Amended by Pub. L. 101-649, Sec. 151(a), 104 Stat. 5004; 8 U.S.C. 1101(a)(27); November 29, 1990 and 214 of Pub. L. 103-416, 108 Stat. 4314, October 25, 1994]